

**In The Matter Of:**  
*In re: City of Detroit, Michigan*

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*Anthony V. Marrocco*  
*July 10, 2014*

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<p>1 Clinton Township, Michigan 2 Thursday, July 10, 2014 3 10:15 a.m. 4 ANTHONY V. MARROCCO, 5 was thereupon called as a witness herein, and 6 after having first been duly sworn to testify to 7 the truth, the whole truth and nothing but the 8 truth, was examined and testified as follows: 9 <b>MR. WATSON:</b> Let the record reflect 10 that this will be a deposition taken pursuant to 11 Notice to be used for all purposes appropriate 12 under the applicable court rules.</p> <p>13 <b>EXAMINATION</b> 14 <b>BY MR. WATSON:</b></p> <p>15 Q. Mr. Marrocco, I'll be asking you a series of 16 questions. If you don't understand the question, 17 want me to rephrase it or accommodate you in some 18 way, please ask that I do so and I will try to 19 accommodate. Otherwise, I'll assume you've heard 20 the question, understand it, and are responding 21 to it, okay?</p> <p>22 A. Okay.</p> <p>23 Q. Have you been deposed before?</p> <p>24 A. Probably.</p> <p>25 Q. So you know a court reporter cannot take down a</p>	<p>Page 5</p> <p>1 joint owners? 2 A. He owned some. Other ones I was partnered with. 3 Q. And how long did you do that, approximately? 4 A. Well, when I was in high school, I helped him. I 5 worked for him in the building-of-houses business 6 in my summers in high school. 7 Q. When did you graduate from high school? 8 A. 1966. 9 Q. When did you start at Macomb County? 10 A. As commissioner? 11 Q. Or just any employment at the county. 12 A. Full-time or part-time? 13 Q. Full-time. 14 A. January 1, 1993. 15 Q. And I take it from the time you started working 16 with your father until '93 you were in this 17 constructing homes business? 18 A. Yeah. 19 Q. What was the position you started with at Macomb 20 County? 21 A. In January '93? 22 Q. Yes. 23 A. Public Works Commissioner. 24 Q. How long did you remain in that position? 25 A. I am -- up to this day, I am currently the Public</p>
<p>1 nod of the head or non-verbal gesture. You have 2 to answer verbally. 3 A. So be it. 4 Q. Will you state your name for the record. 5 A. Anthony Marrocco. 6 Q. And, Mr. Marrocco, will you tell us your 7 educational background. 8 A. High school, Notre Dame High School in Harper 9 Woods, University of Detroit college in Detroit, 10 bachelor of arts degree. 11 Q. What was -- you're currently an employee of 12 Macomb County? 13 A. Yes. 14 Q. What was your work experience prior to Macomb 15 County? 16 A. Prior to Macomb County, I built houses and 17 developed property. 18 Q. Did you own your own company? 19 A. I worked with my father. 20 Q. What was the name of the company? 21 A. I have various companies -- Marrocco Enterprises, 22 Amanda Corporation, Frosinone Company, 23 F-r-o-s-i-n-o-n-e, partnership, Tava Investments, 24 commercial -- some apartments. 25 Q. And your father owned these companies or were you</p>	<p>Page 6</p> <p>1 Works Commissioner. 2 Q. And what are your job duties as Public Works 3 Commissioner? 4 A. I administer the Office of Public Works for the 5 County of Macomb. And the Office of Public Works 6 oversees a lot of construction in the county, 7 whether it's sanitary sewer, storm sewer, water 8 main projects. We sell bonds to finance projects. 9 We have a Soil Erosion Department that issues soil 10 erosion permits for probably 90% of the building 11 that goes on in Macomb County. What else do we 12 do? We review prints that come in our office. I 13 don't do these individually. I administer the 14 office and make sure I have the proper people 15 working in the proper place. 16 Q. Now, as I understand, there's only one Public 17 Works Commissioner? 18 A. For the county, yes. 19 Q. For the county. 20 A. But there are public works officials in other 21 communities. 22 Q. As part of your duty as Public Works 23 Commissioner, did you have any dealings with the 24 Detroit Water and Sewerage Department? 25 A. As Public Works Commissioner?</p>

<p>1 Q. Yes.</p> <p>2 A. Yes.</p> <p>3 Q. And can you explain the nature of your business</p> <p>4 dealings with DWSD.</p> <p>5 <b>MS. BADALAMENTI:</b> What time period?</p> <p>6 <b>BY MR. WATSON:</b></p> <p>7 Q. Well, let's start off initially when you started,</p> <p>8 and then let's go to the 2000 -- early 2000 time</p> <p>9 frame.</p> <p>10 A. When I started in '93, I guess the initial</p> <p>11 dealings with Detroit were basically overseeing</p> <p>12 the rates that Detroit passed on to Macomb County,</p> <p>13 and then we would pass the rates on to the</p> <p>14 communities within the water -- excuse me, within</p> <p>15 the sanitary sewer district. So we only deal with</p> <p>16 Detroit on the sanitary sewer and the wastewater</p> <p>17 end. We're the primary customer.</p> <p>18 Q. And as I understand it, Detroit owned the system?</p> <p>19 A. Yes.</p> <p>20 Q. How did it come about that Detroit owned the</p> <p>21 Macomb County sewer system? Do you know?</p> <p>22 A. Well, I want to say probably -- hopefully my facts</p> <p>23 are correct. Probably in the 70s there was a big</p> <p>24 interceptor sewer brought out to Macomb County at</p> <p>25 15 Mile and extended over to Oakland County, and</p>	<p>Page 9</p> <p>1 you narrow down the time frame?</p> <p>2 <b>BY MR. WATSON:</b></p> <p>3 Q. Well, when did negotiations first start with</p> <p>4 regard to the purchase of the system by Macomb</p> <p>5 from Detroit? Do you know?</p> <p>6 A. Oh, I would say approximately 2007.</p> <p>7 Q. Were you involved in the initial conversations</p> <p>8 regarding this purchase?</p> <p>9 A. I probably was.</p> <p>10 Q. What was your involvement?</p> <p>11 A. Initially the involvement was that we wanted to</p> <p>12 buy the system, from Detroit, that served Macomb</p> <p>13 County so we could maintain it.</p> <p>14 Q. And who are you talking with from Detroit about</p> <p>15 this?</p> <p>16 A. Probably would have been the director at the time.</p> <p>17 Q. Who was the director at the time?</p> <p>18 A. I think that was Victor Mercado.</p> <p>19 Q. In these discussions with Mercado, was it you and</p> <p>20 Mercado? Were others involved in the</p> <p>21 discussions?</p> <p>22 A. I don't remember.</p> <p>23 Q. Did these discussions eventually result in some</p> <p>24 type of agreement to purchase the system?</p> <p>25 A. Eventually it did.</p>
<p>1 it was all basically put in with federal grant</p> <p>2 money. Detroit put that sewer in; therefore they</p> <p>3 were the owner of the sewer.</p> <p>4 Q. At some point was it decided that Detroit would</p> <p>5 sell the system to Macomb and Macomb would</p> <p>6 purchase the system from Detroit?</p> <p>7 A. Eventually.</p> <p>8 Q. And were you involved in that decision-making</p> <p>9 process?</p> <p>10 A. Which decision?</p> <p>11 Q. To -- from looking at it from Macomb's</p> <p>12 perspective, for Macomb to purchase the system</p> <p>13 from Detroit.</p> <p>14 A. Yes, I was involved.</p> <p>15 Q. I've heard rumors about some handshake deal</p> <p>16 between you and the director of the Detroit</p> <p>17 system that set the broad parameters for that</p> <p>18 purchase. Do you recall that at all?</p> <p>19 A. No.</p> <p>20 Q. Okay. Can you describe the nature of the</p> <p>21 negotiations or describe the negotiation process</p> <p>22 that eventually resulted in Macomb purchasing the</p> <p>23 system.</p> <p>24 <b>MS. BADALAMENTI:</b> I think that's a</p> <p>25 vague question that calls for a narrative. Can</p>	<p>Page 10</p> <p>1 Q. Do you recall there was a long-standing federal</p> <p>2 court case involving Detroit in which Judge</p> <p>3 Feikens was in effect overseeing Detroit's</p> <p>4 running of the sewer system? Do you recall such</p> <p>5 a case?</p> <p>6 A. Yes.</p> <p>7 Q. And if I call that the sludge case, is that what</p> <p>8 it was referred to?</p> <p>9 A. Not to my knowledge.</p> <p>10 Q. What did you refer to it as?</p> <p>11 A. Just an -- the EPA was forcing Detroit to make</p> <p>12 improvements to the system to clean up the Detroit</p> <p>13 River.</p> <p>14 Q. And was Macomb from time to time involved in that</p> <p>15 case?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know why Macomb would get involved?</p> <p>18 A. Not exactly sure why, because you're looking at</p> <p>19 when the initial, I guess, lawsuit was filed by</p> <p>20 the EPA, which I'm guessing was back in the 70s.</p> <p>21 It was way before my time.</p> <p>22 Q. Did Macomb ever assert any claims against Detroit</p> <p>23 for Detroit's operation or what it considered</p> <p>24 faulty operation or excess charges in regard to</p> <p>25 the sewer system?</p>

<p>1 A. <b>When? Give me a time frame.</b></p> <p>2 Q. Well, I'm thinking 2000 -- early 2000s. Do you 3 recall any of that?</p> <p>4 A. <b>I don't recall that.</b></p> <p>5 <b>MARKED FOR IDENTIFICATION:</b></p> <p>6 DEPOSITION EXHIBIT 1</p> <p>7 10:26 a.m.</p> <p>8 <b>BY MR. WATSON:</b></p> <p>9 Q. Let me hand you, Mr. Marrocco, what's been marked 10 as Exhibit No. 1. And my question to you is: 11 Can you identify that document?</p> <p>12 A. <b>On the face it is -- United States of America is the plaintiff and counter-defendant versus the State of Michigan as defendant and counter-plaintiff versus City of Detroit, a municipal corporation, and Detroit Water and Sewerage Department, defendant and cross-plaintiff, and including all communities and agencies under contract with the City of Detroit for sewage treatment services.</b></p> <p>21 Q. Was Macomb County one of the, I guess we could 22 say, communities under contract with the City of 23 Detroit for sewage treatment services?</p> <p>24 A. <b>Yes, at this time, I believe, whatever date this is.</b></p>	<p>Page 13</p> <p>1 May 12, 2009," and lists various parties, 2 including Detroit and the County of Macomb. Do 3 you see that language?</p> <p>4 A. <b>Um-hmm. Yes.</b></p> <p>5 Q. Do you remember entering into this agreement?</p> <p>6 A. <b>I remember entering into an agreement.</b></p> <p>7 Q. And was the court involved in overseeing the 8 negotiations between Detroit and Macomb and other 9 entities that resulted in this agreement? Do you 10 recall that?</p> <p>11 A. <b>I don't think they were in this. Because there's some issues here that -- I can't answer that. I don't think so necessarily.</b></p> <p>14 Q. Okay. Would you have read this agreement before 15 you signed it?</p> <p>16 A. <b>I probably would have had my legal counsel read it.</b></p> <p>18 Q. Who was your legal counsel at that time?</p> <p>19 A. <b>Well, my deputy -- chief deputy Bill Misterovich.</b></p> <p>20 Q. Okay.</p> <p>21 A. <b>He would have been in-house, and obviously we had Bodman, I believe, would have been the attorneys outside that we hired.</b></p> <p>24 Q. Okay. I want to ask you about a few of the 25 provisions. Let's go to the page that starts off</p>
<p>Page 14</p> <p>1 Q. In thumbing through the agreement, I'm looking at 2 page 7.</p> <p>3 A. <b>Um-hmm.</b></p> <p>4 Q. Does that appear to be your signature on the 5 agreement?</p> <p>6 A. <b>There's another page 7. There's two page 7s.</b></p> <p>7 Q. Yeah. The second page 7.</p> <p>8 A. <b>Yes.</b></p> <p>9 Q. Are you familiar with this agreement?</p> <p>10 A. <b>Without having -- no, not by just looking at it. I'd have to read it.</b></p> <p>12 Q. Okay. Can you take a few minutes to look it 13 over.</p> <p>14 <b>MS. BADALAMENTI:</b> Is there something 15 specific you want to ask him about? I mean, it's 16 a pretty lengthy agreement.</p> <p>17 <b>MR. WATSON:</b> Yes. I'm going to ask him 18 about some of the language in the agreement.</p> <p>19 <b>THE WITNESS:</b> I've kind of looked at 20 the first two pages.</p> <p>21 <b>BY MR. WATSON:</b></p> <p>22 Q. Does that refresh your recollection at all?</p> <p>23 A. <b>Yeah, it does, a little bit.</b></p> <p>24 Q. In looking at the first page of the agreement, I 25 see it says "This Settlement Agreement...is made</p>	<p>Page 16</p> <p>1 Settlement Agreement. I think it's actually page 2 1 of the agreement.</p> <p>3 A. <b>Okay.</b></p> <p>4 Q. I'm looking at Background and Purpose. A-iii 5 reads in part "All disputes related to the 6 interest rate charged to Macomb related to debt 7 service associated with the cost of repairs of 8 the 2004 collapse." Do you see that language?</p> <p>9 A. <b>Yes.</b></p> <p>10 Q. Was there a dispute between Detroit and Macomb in 11 regard to interest rate related to debt service 12 associated with the 2004 sewer collapse repairs?</p> <p>13 A. <b>Yes.</b></p> <p>14 Q. And was that dispute settled by this agreement?</p> <p>15 A. <b>It was a global settlement.</b></p> <p>16 Q. So it settled everything?</p> <p>17 A. <b>Yes.</b></p> <p>18 Q. Okay. Then the next paragraph talks about "All 19 disputes and claims between the parties related 20 to costs for repairs and renovation of the 21 interceptor sewers listed in Exhibit 1." Do you 22 see that language?</p> <p>23 A. <b>Yes.</b></p> <p>24 Q. Do you know what the interceptor sewers were?</p> <p>25 Was that --</p>

<p>Page 17</p> <p>1 A. I don't understand what you mean, do I know what 2 the interceptor sewers are. 3 Q. I guess my question is: Were the interceptor 4 sewers at least part of that system, the sewers 5 that collapsed -- the 15 Mile and Hayes sewer 6 collapse problems? 7 A. Was that part of that? 8 Q. Yes. 9 A. If it's on Exhibit 1 of Exhibit D, I guess it 10 would be.</p> <p>11 <b>MARKED FOR IDENTIFICATION:</b> 12 DEPOSITION EXHIBIT 2 13 10:32 a.m.</p> <p>14 <b>BY MR. WATSON:</b> 15 Q. Let me hand to you what's been marked as Marrocco 16 Exhibit 2. Are you familiar with this document 17 at all, Letter of Intent? 18 A. Not really. 19 Q. If you go back to Exhibit 1, the Settlement 20 Agreement, and thumb through about half of it, 21 you'll see a page marked Exhibit D. 22 A. Is there a page number? 23 Q. 1704 in the top right-hand corner? 24 <b>MS. BADALAMENTI:</b> We don't have 1704. 25 <b>THE WITNESS:</b> Is this the Letter of</p>	<p>Page 19</p> <p>1 Q. Yes. Is the system that collapsed -- I always 2 think of it was 15 Mile and Hayes. Is that part 3 of these? 4 A. What area were you saying, again? 5 Q. Well, what I'm thinking about is the interceptor 6 that collapsed in August 2004. 7 A. Is it listed here? 8 Q. Yes. 9 A. No. 10 Q. And what do you call the one that's listed -- the 11 one that collapsed, what do you refer to that one 12 as? 13 <b>MS. BADALAMENTI:</b> The one that's not 14 listed? 15 <b>BY MR. WATSON:</b> 16 Q. You say it's not listed. 17 A. What do we call it? 18 Q. Yeah. 19 A. It would be the interceptor -- the Macomb 20 interceptor. 21 Q. Okay. Let's go back to 1 -- Exhibit 1, and I'll 22 ask you -- let's see. Is the Macomb interceptor 23 the one referenced in 1-A-ii? 24 <b>MS. BADALAMENTI:</b> What page are you on? 25 <b>MR. WATSON:</b> It would be 1685.</p>
<p>Page 18</p> <p>1 Intent that you're referring to? 2 <b>BY MR. WATSON:</b> 3 Q. Yes. 4 A. Okay. There's no marking. 5 Q. And unfortunately on this document, Exhibit 1, 6 the Letter of Intent -- the Exhibit 1 to the 7 Letter of Intent was not attached. That's why I 8 made Exhibit 2 the Letter of Intent with 9 Exhibit 1 attached to it, which gets a little 10 confusing. 11 A. You'll have to excuse me. I came in late last 12 night from Miami and I had to get here early 13 today, so my mind is a little foggy. What page do 14 you want me to look at here? 15 Q. Go to two pages from the end. 16 A. Of the Letter of Intent? 17 Q. Yeah. 18 <b>MS. BADALAMENTI:</b> You're in Exhibit 2 19 now? Because Exhibit 1 doesn't have this 20 document. 21 <b>MR. WATSON:</b> Right. 22 <b>BY MR. WATSON:</b> 23 Q. There's a list of interceptors. 24 A. It says Oakland-Macomb Interceptor System at the 25 top, Exhibit 1?</p>	<p>Page 20</p> <p>1 <b>MR. SHAHID:</b> On the top. 2 <b>MR. WATSON:</b> At the top. 3 <b>MS. BADALAMENTI:</b> We have different 4 page IDs. What I'm looking at page 8431, but I 5 can see where you're at. 6 <b>MR. SHAHID:</b> Ours says 8431. 7 <b>MS. BADALAMENTI:</b> So you're at sub 1- 8 A-ii. 9 <b>BY MR. WATSON:</b> 10 Q. 1-A-ii: "All disputes related to the allocation 11 of repair costs related to the August 4, 2004 12 collapse and the Romeo Arm of the Macomb 13 Interceptors," I take it that's the one that 14 collapsed? 15 A. Well, it's not the Romeo arm. 16 Q. Wasn't it 15 Mile and Hayes? Isn't that where 17 the collapse occurred? 18 A. Yes, in that vicinity, but it's not the Romeo arm. 19 Q. What do you call it? 20 A. It would just be the Macomb Interceptor. Romeo 21 arm extends -- goes up toward Romeo. 22 Q. Does the Romeo arm include the Macomb 23 Interceptor? 24 A. It's hard to say. I can't really answer how our 25 office designates what area, but it would have to</p>

<p>1 <b>go up to Garfield and then up Garfield, and -- but</b>  2 <b>I guess, you know, this could be considered the</b>  3 <b>Romeo arm. I don't know. You see -- I mean,</b>  4 <b>excuse me. One thing real quick. This goes back</b>  5 <b>to the 70s, how they used to designate these</b>  6 <b>names, so you know.</b></p> <p>7 Q. Are you aware of any other 2004 collapse other  8 than the Macomb Interceptor?</p> <p>9 A. <b>No.</b></p> <p>10 Q. Let's look at v. It mentions Infrastructure  11 Management Group, "All disputes related to the  12 continuing oversight of contracts exceeding  13 \$500,000 by the Infrastructure Management Group."</p> <p>14 Are you familiar with the Infrastructure  15 Management Group?</p> <p>16 A. <b>No.</b></p> <p>17 Q. Can you tell us what that is?</p> <p>18 A. <b>No.</b></p> <p>19 Q. Do you know if they looked at claims over  20 \$500,000 or contracts over \$500,000?</p> <p>21 A. <b>No.</b></p> <p>22 Q. Let's turn to page ID 8433 B, which is entitled  23 2004 Collapse Claims, 2006 Interceptor Repairs,  24 Interceptor Interest Rate. Do you see that?</p> <p>25 A. <b>Yes.</b></p>	<p>Page 21</p> <p>1 A. <b>Yes.</b></p> <p>2 Q. Was the broad parameter of the sale that Macomb  3 would purchase the system by assuming the system  4 debt?</p> <p>5 A. <b>Yes.</b></p> <p>6 Q. And were you involved in that, say, broad  7 agreement?</p> <p>8 <b>MS. BADALAMENTI:</b> Agreement to do what?</p> <p>9 <b>BY MR. WATSON:</b></p> <p>10 Q. Purchase the system for the system debt. Let me  11 explain what I'm getting at.</p> <p>12 A. <b>Yeah.</b></p> <p>13 Q. See, as I understand it, there was some type of  14 broad agreement in principle between Detroit and  15 Macomb, all right, that Macomb will purchase the  16 system by assuming the system debt.</p> <p>17 A. <b>Um-hmm.</b></p> <p>18 Q. And that that was a certain amount at that time.</p> <p>19 A. <b>Yes.</b></p> <p>20 Q. And I'm wondering who reached that broad  21 agreement to purchase the system for system debt?</p> <p>22 I was thinking it was you.</p> <p>23 A. <b>Well, we paid more than that.</b></p> <p>24 Q. Who all was involved in reaching that agreement?</p> <p>25 Do you know?</p>	<p>Page 23</p>
<p>1 Q. And here the first sentence reads: "The parties,  2 in complete satisfaction of the 2004 collapse  3 claims, Macomb's claims with regard to the 2006  4 repairs to the Macomb Interceptors, and the  5 Interceptor interest rate claims, agree to  6 principal and interest rate adjustments on  7 charges by DWSD to Macomb in the aggregate amount  8 of \$17,050,000." Do you see that language?</p> <p>9 A. <b>Yes.</b></p> <p>10 Q. And what was that \$17,050,000 for? Was that just  11 an accommodation to reduce the purchase price?</p> <p>12 What was your understanding of why that was the  13 adjustment?</p> <p>14 A. <b>That was the global settlement for all the issues</b>  15 <b>we had with Detroit.</b></p> <p>16 Q. Okay. So what I'm understanding is there were  17 negotiations going on for Macomb to purchase the  18 system, and the parties were going back and forth  19 in regard to the amount of the price?</p> <p>20 A. <b>I'm sure there was negotiations going on, yes.</b></p> <p>21 Q. And Detroit agreed to reduce the cost by this 17  22 million?</p> <p>23 A. <b>The global settlement.</b></p> <p>24 Q. Through the global settlement the cost was  25 reduced by 17 -- over 17 million?</p>	<p>Page 22</p> <p>1 A. <b>Well, I probably signed the papers in the end, but</b>  2 <b>I wasn't in the negotiating room with anybody.</b></p> <p>3 Q. Would they have had to run it by you, whoever was  4 on your team?</p> <p>5 A. <b>Yes.</b></p> <p>6 Q. And you're thinking the attorneys, Misterovich  7 and the attorney for Bodman would have been at  8 least two of the folks?</p> <p>9 A. <b>Yes.</b></p> <p>10 Q. Do you recall that the system debt at one point  11 was something like, according to Detroit,  12 \$116 million?</p> <p>13 A. <b>Say that again.</b></p> <p>14 Q. Do you recall that the system debt at one point,  15 according to Detroit, was something like  16 \$116 million?</p> <p>17 A. <b>I do not.</b></p> <p>18 Q. Do you recall what the system eventually was  19 purchased for?</p> <p>20 A. <b>I believe it was just under \$90 million.</b></p> <p>21 Q. And that 90 million was after the 17 million was  22 deducted that we're looking at here?</p> <p>23 A. <b>That was a credit given.</b></p> <p>24 Q. And were there other credits given?</p> <p>25 A. <b>I'm not sure.</b></p>	<p>Page 24</p>

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<p>1 Q. Let's go to page 8436. I'm looking at paragraph 2 ii. And it talks about if the parties don't 3 reach agreement within a certain time, either 4 party could declare provisions of this agreement 5 void and without effect. Do you see that 6 language?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Are you aware of any provisions of this agreement 9 ever being declared void or no effect?</p> <p>10 <b>A. I'm not aware of that.</b></p> <p>11 Q. Look at paragraph B, which reads in part "This 12 agreement, and the exhibits, contains the entire 13 agreement between the parties with regard to the 14 matters addressed in this agreement." Do you see 15 that language?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Was that your understanding, that this was a full 18 agreement, a comprehensive settlement between 19 Detroit, Macomb and other parties?</p> <p>20 <b>A. That's what my attorney said.</b></p> <p>21 Q. Resolved all disputes?</p> <p>22 <b>A. At that point.</b></p> <p>23 Q. Let's go to the next page. I see a signature.</p> <p>24 It appears to be Pamela Turner. Are you familiar 25 or do you know Pamela Turner?</p>	<p>1 <b>A. Um-hmm.</b></p> <p>2 Q. And going to the next page, there's a 6, 3 Interceptor Interest Rate. Were there interest 4 rate disputes pending prior to this settlement 5 agreement?</p> <p>6 <b>A. I believe so.</b></p> <p>7 Q. Were all those interest rate disputes resolved?</p> <p>8 <b>A. I don't know if all were resolved, but the ones 9 that are shown here obviously were resolved.</b></p> <p>10 Q. And then going to Exhibit D, the Letter of 11 Intent --</p> <p>12 <b>MS. BADALAMENTI:</b> What page?</p> <p>13 <b>MR. WATSON:</b> 8451.</p> <p>14 <b>BY MR. WATSON:</b></p> <p>15 Q. I'm looking at the top of the page -- well, the 16 next page, 8452, paragraph 3, which reads in part 17 "The consideration...for the acquisition of the 18 property would be an amount equal to the 19 outstanding debt (including accrued interest) 20 owed by the city that is allocated to the 21 property," and then it also mentions adjusted by 22 the amount of 17,050,000 and such other 23 adjustments agreed upon by the parties. Do you 24 see that language?</p> <p>25 <b>A. Yes.</b></p>
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<p>1 <b>A. At that time I did.</b></p> <p>2 Q. And at the date this agreement was made, May 12, 3 2009, was she the interim director of DWSD?</p> <p>4 <b>A. She signed it as being the interim director.</b></p> <p>5 Q. So you assume she was?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Let's skip one page and go to -- it looks like 8 the third page 7, 8439. It appears to be a 9 signature of John McCulloch. Are you familiar 10 with him?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And he was the commissioner for -- Water 13 Resources Commissioner for Oakland County?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. And going to the next page 7, there appears to be 16 a signature -- I can't read it. It says 17 "Assistant County Executive, County of Wayne." 18 Do you know who that would be?</p> <p>19 <b>A. Not really.</b></p> <p>20 Q. Thumbing through the agreement, and looking at 21 one of the attachments -- it's page 8446, Exhibit 22 C to the agreement, in fact, page 8447. At the 23 top of the page it says "Exhibit C, List of 24 Matters." Page 8447, Exhibit C lists matters 25 resolved?</p>	<p>1 <b>MS. BADALAMENTI:</b> I don't think that's 2 a complete quote of the language, but go ahead.</p> <p>3 <b>BY MR. WATSON:</b></p> <p>4 Q. No, it's not a total quote. I'm trying to save a 5 little time.</p> <p>6 To your understanding, was that summary 7 of the expected deal accurate?</p> <p>8 <b>A. A credit?</b></p> <p>9 Q. Well, the expected deal was Macomb would assume 10 the debt.</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. The amount would be reduced by over 17 million 13 plus any further amounts that the parties could 14 agree upon.</p> <p>15 <b>A. On top of the 17 million.</b></p> <p>16 Q. Right.</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Okay. Now, this agreement was made, according to 19 the language on the first page, May 12, 2009.</p> <p>20 And we'll get into the acquisition agreement, but 21 that was signed in 2010, wasn't it?</p> <p>22 <b>A. What was signed in 2010?</b></p> <p>23 Q. The acquisition agreement, the actual sale.</p> <p>24 <b>A. Yes, before the indictment and the revelation that 25 there was some hanky-panky going on with the sewer</b></p>

<p>1 <b>collapse.</b></p> <p>2 Q. So this happened before any of that?</p> <p>3 <b>A. Right, before they revealed to us what was going</b></p> <p>4 <b>on.</b></p> <p>5 Q. What was taking place between this May 2009 and</p> <p>6 -- I think the acquisition agreement was</p> <p>7 September 2010. What was going on during that</p> <p>8 period?</p> <p>9 <b>A. September 2010 to --</b></p> <p>10 Q. From when this agreement was signed, May 2009 to</p> <p>11 September 2010, when the acquisition agreement</p> <p>12 was signed.</p> <p>13 <b>MS. BADALAMENTI:</b> I'm going to object</p> <p>14 to this. The Letter of Intent that's here does</p> <p>15 not appear to be signed, but subject to that</p> <p>16 objection, you can go ahead and answer.</p> <p>17 <b>BY MR. WATSON:</b></p> <p>18 Q. Do you know what was going on?</p> <p>19 <b>A. No, I don't know.</b></p> <p>20 Q. Were there negotiations occurring?</p> <p>21 <b>A. I have no idea.</b></p> <p>22 Q. Who was -- you said the attorney for Bodman and</p> <p>23 Misterovich were the principal negotiators for</p> <p>24 Macomb?</p> <p>25 <b>A. Yes.</b></p>	<p>Page 29</p> <p>1 Q. So wouldn't Mercado have been gone before May 12,</p> <p>2 2009?</p> <p>3 <b>MS. BADALAMENTI:</b> Been gone from what,</p> <p>4 his position or the negotiations?</p> <p>5 <b>MR. WATSON:</b> Both.</p> <p>6 <b>THE WITNESS:</b> I'm not sure.</p> <p>7 <b>BY MR. WATSON:</b></p> <p>8 Q. Okay. So you're not certain when Mercado left?</p> <p>9 <b>A. Right.</b></p> <p>10 Q. You say through the years you talked to him.</p> <p>11 What was the discussion about?</p> <p>12 <b>A. About basically on the sewer collapse, about the</b></p> <p>13 <b>charges.</b></p> <p>14 Q. What did he say about the charges? What did you</p> <p>15 say about the charges?</p> <p>16 <b>A. He said everything was fair and accurate, and I</b></p> <p>17 <b>didn't think they were. Who was I to question?</b></p> <p>18 Q. By everything was fair and accurate, what did you</p> <p>19 take that to mean?</p> <p>20 <b>A. That Detroit was looking out for the interests of</b></p> <p>21 <b>Macomb County, that we weren't being overcharged.</b></p> <p>22 Q. For the system?</p> <p>23 <b>A. For the repair.</b></p> <p>24 Q. How did the repair pertain to the purchase price?</p> <p>25 <b>A. It was just one global settlement, you know. I</b></p>
<p>1 Q. Paragraph 5 on that same page, Access and</p> <p>2 Investigation, it talks about Detroit should</p> <p>3 afford basically the other parties to this</p> <p>4 agreement the opportunity to secure documents or</p> <p>5 look at anything they wanted to. Was that your</p> <p>6 understanding, that prior to actually signing the</p> <p>7 agreement, Macomb had the right to get documents</p> <p>8 from Detroit, to inspect things if it wanted to?</p> <p>9 <b>A. That's what that paragraph says.</b></p> <p>10 Q. And in reality, is that what the situation was,</p> <p>11 that you would have -- Macomb could have secured</p> <p>12 any documents it wanted or inspected the system</p> <p>13 if it wanted?</p> <p>14 <b>A. The paragraph says we could.</b></p> <p>15 Q. Did Macomb do that?</p> <p>16 <b>A. I cannot answer that, but I did talk to Victor</b></p> <p>17 <b>Mercado. He said everything is proper.</b></p> <p>18 Q. When did you talk to Mr. Mercado?</p> <p>19 <b>A. Over the years, since he was the director.</b></p> <p>20 Q. Do you know when he left?</p> <p>21 <b>A. Well, I believe he left when the indictments came</b></p> <p>22 <b>down, basically. 2000 -- end of 2010.</b></p> <p>23 Q. Well, wasn't Pam Turner the interim director when</p> <p>24 this deal was signed?</p> <p>25 <b>A. Yes.</b></p>	<p>Page 30</p> <p>1 <b>can't tell you how exactly the 17 million</b></p> <p>2 <b>pertained to.</b></p> <p>3 Q. Do you know why Detroit reduced the amount 17</p> <p>4 million?</p> <p>5 <b>MS. BADALAMENTI:</b> Other than what's</p> <p>6 stated in the agreement?</p> <p>7 <b>MR. WATSON:</b> Yeah.</p> <p>8 <b>THE WITNESS:</b> No. I mean --</p> <p>9 <b>BY MR. WATSON:</b></p> <p>10 Q. Did you and Mercado talk about Detroit reducing</p> <p>11 the amount?</p> <p>12 <b>A. Oh, yes.</b></p> <p>13 Q. What did -- you wanted, I take it, further</p> <p>14 reduction?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And I would take it Mercado didn't want to</p> <p>17 reduce?</p> <p>18 <b>A. I talked to Mercado about reducing the cost of the</b></p> <p>19 <b>sewer collapse repair bill. The global settlement</b></p> <p>20 <b>took in a lot of other issues, and that 17 million</b></p> <p>21 <b>doesn't specify how much money goes to which of</b></p> <p>22 <b>those issues.</b></p> <p>23 Q. Who negotiated the 17 million? Do you know?</p> <p>24 <b>A. On behalf of which party?</b></p> <p>25 Q. Well, Macomb.</p>

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<p>1 A. It would have been, you know, Mr. Misterovich and 2 Mr. -- or a representative from Bodman.</p> <p>3 Q. Was Hupp the main Bodman attorney? Do you know?</p> <p>4 A. Yes.</p> <p>5 Q. And who was negotiating for Detroit?</p> <p>6 A. I don't know.</p> <p>7 Q. And you weren't the main negotiator for Macomb?</p> <p>8 A. I didn't sit in on negotiations.</p> <p>9 Q. Do you know if Mercado sat in on negotiations?</p> <p>10 A. I'm not sure.</p> <p>11 Q. Now, how many discussions over the years do you 12 think you had with Mercado about the cost of the 13 repairs?</p> <p>14 A. I don't know.</p> <p>15 Q. And when he -- you say he told you the costs were 16 fair and accurate?</p> <p>17 A. That's what he said.</p> <p>18 Q. And by cost, we're talking about millions of 19 dollars, I take it?</p> <p>20 A. Yes.</p> <p>21 Q. Were the statements by Mercado ever reduced to 22 writing at all?</p> <p>23 A. I'm not aware.</p> <p>24 Q. Okay. Did you ever think that, gee, maybe I 25 better get this in writing?</p>	<p>1 <b>MARKED FOR IDENTIFICATION:</b> 2 DEPOSITION EXHIBIT 3 3 11:00 a.m. 4 <b>BY MR. WATSON:</b> 5 Q. Let me hand you what's been marked Exhibit No. 3, 6 Mr. Marrocco. My question is: Have you seen the 7 document attached to this fax before?</p> <p>8 A. <b>Have I seen this before?</b> 9 Q. Yes.</p> <p>10 A. <b>I don't remember, but I see it now.</b> 11 Q. Okay. Does that appear to be your signature on 12 the document?</p> <p>13 A. <b>Yes, it does.</b> 14 Q. And the fax, the first page, seems to be dated 15 11/17/04.</p> <p>16 A. <b>Um-hmm.</b> 17 Q. And it faxes to Victor Mercado a two-page letter 18 from you dated November 16, 2004; is that 19 correct?</p> <p>20 A. <b>Yes.</b> 21 Q. And through the letter you request 15 categories 22 of documents relating to the 15 Mile Road 23 interceptor, correct?</p> <p>24 A. <b>Yes.</b> 25 Q. Do you know if these documents were furnished?</p>
Page 34	Page 36
<p>1 A. I thought he was a man of his word.</p> <p>2 Q. And did he tell you this, what you're saying, on 3 more than one occasion?</p> <p>4 A. <b>What was that?</b></p> <p>5 Q. Did he tell you this on more than one occasion?</p> <p>6 A. <b>Tell me what?</b></p> <p>7 Q. That the costs were fair and accurate.</p> <p>8 A. <b>Yes, he did.</b></p> <p>9 Q. And was anyone ever there when he told you that 10 or was it just the two of you?</p> <p>11 A. <b>Maybe Mr. Misterovich might have been there.</b></p> <p>12 Q. Do you know where that particular discussion took 13 place?</p> <p>14 A. <b>No. There's many places we've talked with</b> <b>15 Mr. Mercado, so I wouldn't remember which.</b></p> <p>16 Q. Do you know approximately when that discussion 17 when Misterovich was there took place?</p> <p>18 A. <b>Before 2010.</b></p> <p>19 Q. Was it before this settlement agreement? Do you 20 know?</p> <p>21 A. <b>Yeah. Yes.</b></p> <p>22 Q. You weren't shy about asking Detroit for 23 documents or information if you felt you needed 24 it, were you?</p> <p>25 A. <b>That's up to my attorneys.</b></p>	<p>1 Did you receive the documents?</p> <p>2 A. <b>I have no idea.</b></p> <p>3 Q. Over the years is it accurate to say that when 4 Macomb requested documents from Detroit, Detroit 5 would generally get Macomb the documents?</p> <p>6 A. <b>I have no idea.</b></p> <p>7 Q. You had a relationship with Mr. Mercado, did you 8 not, that if anyone who reported to you said we 9 need certain information from Detroit, we're 10 having a rough time getting it, you could pick up 11 the phone and call Mercado directly --</p> <p>12 A. <b>Yes.</b></p> <p>13 Q. -- for the information?</p> <p>14 A. <b>Yes.</b></p> <p>15 Q. Was he generally accommodating to you, if you 16 asked him for something?</p> <p>17 A. <b>I'm sure he was.</b></p> <p>18 Q. Do you recall anything you asked for in 19 connection with the settlement agreement or the 20 acquisition agreement? Any information you 21 wanted prior to entering into those agreements 22 that wasn't supplied by Detroit?</p> <p>23 A. <b>You have to ask my attorneys that, if they got the</b> <b>24 information they needed.</b></p> <p>25 Q. You can't recall anything --</p>

<p>1 A. No.</p> <p>2 Q. -- you asked for that wasn't supplied?</p> <p>3 A. No.</p> <p>4 Q. I want to go back to the settlement agreement,</p> <p>5 the Letter of Intent, which starts at page 8451.</p> <p>6 And go to page 8453.</p> <p>7 A. Okay.</p> <p>8 Q. Paragraph 6, Conditions reads in part, "The</p> <p>9 parties' obligations to consummate the</p> <p>10 transaction would be subject to the satisfaction</p> <p>11 of each of the following conditions at or prior</p> <p>12 to closing, any of which may be waived in whole</p> <p>13 or in part by the parties to the extent permitted</p> <p>14 by applicable law." Is that what it says?</p> <p>15 A. Yes.</p> <p>16 Q. And then looking at the next page -- I'm looking</p> <p>17 at iv. One of the conditions appears to be -- it</p> <p>18 reads "The satisfactory completion in the</p> <p>19 transferee's sole discretion of the transferee's</p> <p>20 due diligence investigations of the property,</p> <p>21 including, without limitation, with respect to</p> <p>22 all operational, financial, environmental</p> <p>23 engineering, legal and accounting matters." Do</p> <p>24 you see that language?</p> <p>25 A. Which item number would that be?</p>	<p>Page 37</p> <p>1 A. That the sewer collapse cost \$55 million to</p> <p>2 repair.</p> <p>3 Q. And you don't think it cost that much?</p> <p>4 A. That's correct.</p> <p>5 Q. What do you base that on, your conclusion it</p> <p>6 didn't cost that much?</p> <p>7 A. I had an engineer give me an estimate what they</p> <p>8 thought it would cost to do that job.</p> <p>9 Q. Who was the engineer?</p> <p>10 A. Anderson, Eckstein &amp; Westrick.</p> <p>11 Q. What did they think it would cost to do the job?</p> <p>12 A. They said approximately \$28 million.</p> <p>13 Q. And did they speak to anyone at Detroit before</p> <p>14 arriving at their estimate?</p> <p>15 A. I can't answer that. I don't know.</p> <p>16 Q. Do you know whether or not they were aware that</p> <p>17 various unforeseen difficulties were encountered</p> <p>18 in repairing the system?</p> <p>19 A. Well, they were not aware that someone was getting</p> <p>20 paid for doing no work.</p> <p>21 Q. Well, we could get into that, but let's --</p> <p>22 A. That was brought out in federal court, and it's a</p> <p>23 fact.</p> <p>24 Q. Were they aware that unforeseen difficulties were</p> <p>25 encountered in effecting the repairs? Do you</p>	
<p>1 Q. That was iv.</p> <p>2 A. Yes, I see it.</p> <p>3 Q. Was it your understanding that Macomb, prior to</p> <p>4 signing the deal, was entitled to satisfy itself</p> <p>5 that all operational, financial, environmental,</p> <p>6 engineering, legal and accounting matters were in</p> <p>7 order -- were in accord with what it wanted in</p> <p>8 regard to the deal?</p> <p>9 A. So your question --</p> <p>10 Q. Let me rephrase it. Could you satisfy yourself</p> <p>11 with regard to all these matters, get all the</p> <p>12 information you wanted? You were entitled to</p> <p>13 satisfy yourself in regard to all this before you</p> <p>14 signed the deal, weren't you?</p> <p>15 A. Yes, we were entitled to it.</p> <p>16 Q. And you didn't -- if you had any questions about</p> <p>17 any of these things, you didn't have to sign the</p> <p>18 deal?</p> <p>19 A. Well, had we known the information on the 15 Mile</p> <p>20 Road sewer collapse was inaccurate and was faulty,</p> <p>21 we probably would have raised an objection, but we</p> <p>22 take it that what they gave to us was true and</p> <p>23 accurate and fair.</p> <p>24 Q. What information did they give to you wasn't true</p> <p>25 and accurate and fair?</p>	<p>Page 38</p> <p>1 know?</p> <p>2 A. No, they didn't -- they just -- as an engineer,</p> <p>3 they did an estimate of what it would cost to do</p> <p>4 the job --</p> <p>5 Q. And --</p> <p>6 A. -- if it was competitively bid out.</p> <p>7 Q. And you said that people were paid for not doing</p> <p>8 work?</p> <p>9 A. Well, that's what they said in federal court.</p> <p>10 Q. Was that in regard to the interceptor collapse</p> <p>11 repairs or was that in regard to other contracts?</p> <p>12 A. The interceptor collapse repair.</p> <p>13 Q. And the interceptor collapse repairs were part of</p> <p>14 contract, I believe, CS-1368. Are you aware of</p> <p>15 that?</p> <p>16 A. I have no idea the numbers.</p> <p>17 Q. Do you have any other reason to believe that</p> <p>18 folks were paid or contractors were paid for work</p> <p>19 that wasn't done other than the federal court</p> <p>20 information?</p> <p>21 A. I think that's pretty strong evidence.</p> <p>22 Q. So the answer to my question is, yes, that's all</p> <p>23 the information you got on this?</p> <p>24 A. No, I have my engineer's estimate.</p> <p>25 Q. So you have two things, engineer's estimate and</p>	<p>Page 40</p>

<p>1 the federal court?</p> <p>2 A. Yes.</p> <p>3 Q. Anything else?</p> <p>4 A. You know, I could say, just using my own</p> <p>5 reasoning, but I'm not going to say that. There</p> <p>6 was an engineer that was qualified who's done many</p> <p>7 projects, and they understand the cost.</p> <p>8 Q. When did you retain this engineer?</p> <p>9 A. I approached them right -- basically after the</p> <p>10 indictment came out, so that had to be in the</p> <p>11 beginning of '11, maybe -- 2011.</p> <p>12 Q. What did you ask them to do?</p> <p>13 A. I just asked him -- I got a copy of the work that</p> <p>14 had been done and I asked him what his estimate to</p> <p>15 do this job would cost.</p> <p>16 Q. Where did you find this engineer?</p> <p>17 A. He's an engineer that this office has used before.</p> <p>18 Q. How many times have you used them?</p> <p>19 A. Too numerous. I can't even give you a number.</p> <p>20 Q. Is he local to Macomb County or local to</p> <p>21 Michigan? Where is he located?</p> <p>22 A. Local to Michigan. He used to be down in Florida</p> <p>23 also.</p> <p>24 Q. How do you know the guy?</p> <p>25 A. Just through his professional credentials and he's</p>	<p>Page 41</p> <p>1 being replaced and --</p> <p>2 Q. So the information you gave him were documents</p> <p>3 from Detroit?</p> <p>4 A. I believe so. I'm not quite sure anymore.</p> <p>5 MS. BADALAMENTI: Is this a good time</p> <p>6 to take a break?</p> <p>7 MR. WATSON: Yeah, it is.</p> <p>8 (Off the record at 11:14 a.m.)</p> <p>9 (Back on the record at 11:26 a.m.)</p> <p>10 MARKED FOR IDENTIFICATION:</p> <p>11 DEPOSITION EXHIBIT 4</p> <p>12 11:26 a.m.</p> <p>13 BY MR. WATSON:</p> <p>14 Q. Mr. Marrocco, you've been handed what's been</p> <p>15 marked Exhibit 4, which is the debtor's witness</p> <p>16 list for the July 17, 2014 hearing. I give you</p> <p>17 that because in our witness list we listed as No.</p> <p>18 5 and No. 6 30(b)(6) corporate representatives, 5</p> <p>19 to testify on various counts of the complaint,</p> <p>20 and 6 to testify in regard to the acquisition</p> <p>21 agreement. And this question is probably for</p> <p>22 your counsel and you. Are you being designated</p> <p>23 as the 30(b)(6) representative for either of</p> <p>24 those two areas?</p> <p>25 A. I have no idea.</p>
<p>Page 42</p> <p>1 done work here. He's represented private business</p> <p>2 people who have submitted prints and drawings here</p> <p>3 for approval.</p> <p>4 Q. Did you have any dealings with him prior to your</p> <p>5 employment with Macomb County?</p> <p>6 A. Yes.</p> <p>7 Q. And what dealings were those?</p> <p>8 A. We hired that company -- my father did, back in,</p> <p>9 I'm going to say, late -- early or mid-70s.</p> <p>10 Q. To do what?</p> <p>11 A. To do engineering for a subdivision. But let me</p> <p>12 just expound. That was before -- that was when</p> <p>13 Anderson, Eckstein &amp; Westrick were principals at</p> <p>14 the company. At this point in 2011, they were all</p> <p>15 gone and the people who own the company are not</p> <p>16 the same principals.</p> <p>17 Q. Who's the key guy you use now?</p> <p>18 A. I think Roy Rose is their president.</p> <p>19 Q. Do you know what information this person utilized</p> <p>20 in arriving at his opinion?</p> <p>21 A. I think just his credentials and experience, being</p> <p>22 a professional engineer.</p> <p>23 Q. Did Macomb supply him with any information?</p> <p>24 A. I might have just gave him maybe some information</p> <p>25 that Detroit gave me possibly, how much sewer was</p>	<p>Page 44</p> <p>1 MS. BADALAMENTI: Good answer.</p> <p>2 MR. WATSON: Is there going to be a</p> <p>3 30(b)(6) rep, though? If it's he, I need to know</p> <p>4 that now so I can --</p> <p>5 MS. BADALAMENTI: We've had those</p> <p>6 discussions with you. We've designated our</p> <p>7 30(b)(6) representative. I think we told you for</p> <p>8 it would be Greg Hupp and for 5 it would be</p> <p>9 either Greg Hupp or Mr. Misterovich. I think for</p> <p>10 5 it was Mr. Misterovich. And you know</p> <p>11 Mr. Misterovich had a very serious surgery about a</p> <p>12 week ago. And we have tried our best to get you</p> <p>13 information from him. He did come in after hours</p> <p>14 despite his condition to get you documents you</p> <p>15 requested, and he has been made available for</p> <p>16 deposition on Monday, the 14th, despite his</p> <p>17 doctor's recommendations that he doesn't do so.</p> <p>18 We've more than accommodated this request.</p> <p>19 BY MR. WATSON:</p> <p>20 Q. Mr. Marrocco, we spent some time before the break</p> <p>21 discussing your conversations with Mr. Mercado in</p> <p>22 which he said everything was fair and accurate.</p> <p>23 I want to make sure that we've gotten your full</p> <p>24 recollection as to when the conversations took</p> <p>25 place, what was discussed in regard to this "fair</p>

<p>1 and accurate" statement, if anything else was 2 discussed in regard to that, who might have been 3 present, where it took place, when. Anything 4 else that you recall in regard to these Mercado 5 conversations?</p> <p>6 <b>MS. BADALAMENTI:</b> That's about six 7 questions in one. Why don't you ask him if he 8 recalls any more information about the 9 conversations with respect to one of those 10 parameters so that he can actually answer you.</p> <p>11 <b>BY MR. WATSON:</b></p> <p>12 Q. Well, I can go through each one. Do you recall 13 anything else about the conversations with 14 Mercado in regard to when they took place other 15 than what you've said?</p> <p>16 A. Well, if you're talking about the sewer 17 collapse --</p> <p>18 Q. The sewer collapse and you said Mr. Mercado said 19 the repair --</p> <p>20 A. That's what I mean. You're talking about the 21 sewer collapse? Because I had talked to 22 Mr. Mercado before the sewer collapse ever 23 happened. Because he became director -- I don't 24 even know what year it was.</p> <p>25 Q. I'm specifically talking about your testimony</p>	<p>Page 45</p> <p>1 Q. Anything else you recall from that conversation?</p> <p>2 A. You know, to be real specific, no, but in general, 3 just the fact that I thought the job was taking a 4 little bit long to get completed, and I thought it 5 was at too high a cost, and I expected that the 6 road would be paved, and he said, no, it's -- the 7 road won't be paved until next spring. Well, why 8 not? Well, you now, dah, dah, dah. To them it 9 kind of benefitted them that they dragged the job 10 on. It's time and material -- time and material, 11 you know. If it was competitively bid out, the 12 contractor would want to get done as soon as 13 possible to make more money. These guys, the 14 longer they're there, the more they're going to 15 make.</p> <p>16 Q. Do you know how long the job took?</p> <p>17 A. Gee, I don't remember anymore. From the time the 18 sewer collapse happened, oh, probably close to two 19 years, I guess.</p> <p>20 Q. For the August 2004 conversation -- I didn't ask 21 you -- was anybody else there or was it just you 22 and Mr. Mercado?</p> <p>23 A. When is this?</p> <p>24 Q. When -- the August 2004 collapse -- well, no, you 25 said the collapse occurred in August 2004.</p>
<p>1 regarding Mercado's statement pertaining to the 2 sewer collapse repairs in which you say Mercado 3 said the repair costs were fair and accurate.</p> <p>4 A. That's correct.</p> <p>5 Q. So can you recall anything else about when those 6 conversations took place?</p> <p>7 A. Well, let's see now. August 2004, about 8 mid-August -- end of August is when the collapse, 9 I believe, occurred, and I'm going to say probably 10 six weeks after that maybe I was questioning, you 11 know, why so much equipment was on the job site, 12 and then, again, in the spring of 2005.</p> <p>13 Q. Where did the August 2004 conversation take 14 place?</p> <p>15 A. I'm not sure on that, where it was, but I remember 16 2005 very accurately. We were all on the street 17 where the collapse was, and I told him, you've got 18 all this equipment here and --</p> <p>19 Q. In spring 2005?</p> <p>20 A. Yeah. And I said, I don't want these contractors 21 charging for this equipment that's parked here.</p> <p>22 Q. And what did he say?</p> <p>23 A. He said, no, no, they're not going to. They're 24 not. They don't use it, they're not going to get 25 paid.</p>	<p>Page 46</p> <p>1 Probably about six weeks after that you had a 2 conversation with Mercado and pointed out you've 3 got all this equipment on the job. Is all that 4 necessary? And he told you it was?</p> <p>5 A. Yes.</p> <p>6 Q. Was anyone else there for that conversation?</p> <p>7 A. Might have been people around, but I don't 8 remember who they were.</p> <p>9 Q. Did you discuss anything else in that 10 conversation?</p> <p>11 A. No, I think that's all Macomb County cared about, 12 that they get the sewer working and it's done at a 13 reasonably fair price.</p> <p>14 Q. How long did you think the job should have taken?</p> <p>15 A. I would say that that job should have been done 16 within a year at most.</p> <p>17 Q. Wasn't it completed within a year?</p> <p>18 A. No, it wasn't. We were getting bills in '06.</p> <p>19 That's two years out.</p> <p>20 Q. Weren't there amendments to the contract that 21 didn't have anything to do with the sewer repair, 22 thought?</p> <p>23 <b>MS. BADALAMENTI:</b> I'm going to object 24 to foundation.</p> <p>25 <b>BY MR. WATSON:</b></p>

<p>1 Q. If you know.</p> <p>2 A. <b>I don't know.</b></p> <p>3 Q. Any other conversations with Mercado in which he</p> <p>4 made representations that the repair costs were</p> <p>5 fair and accurate or something to that effect?</p> <p>6 A. <b>I'm sure there were along the way.</b></p> <p>7 Q. Can you recall the nature of those?</p> <p>8 A. <b>It's a long time ago. I have a lot of other</b></p> <p>9 <b>things that this office does that I can't remember</b></p> <p>10 <b>just that incident.</b></p> <p>11 Q. Did you have such conversations with anyone else</p> <p>12 at DWSD?</p> <p>13 A. <b>Give me a time frame.</b></p> <p>14 Q. Well, any time after the collapse. From the time</p> <p>15 of the collapse to, I guess, up to the time you</p> <p>16 purchased.</p> <p>17 A. <b>Anybody else from DWSD? I think Pam Turner was in</b></p> <p>18 <b>charge at that time, so --</b></p> <p>19 Q. You didn't have any discussions about this with</p> <p>20 her?</p> <p>21 A. <b>No.</b></p> <p>22 Q. What about with Latimer -- Darryl Latimer? Ever</p> <p>23 talk to that guy?</p> <p>24 A. <b>No.</b></p> <p>25 Q. Do you recall that there was a major sewer</p>	<p>Page 49</p> <p>1 A. <b>I would say he did.</b></p> <p>2 Q. Going to the first page, it indicates the</p> <p>3 acquisition agreement is made the 2nd day of</p> <p>4 September 2010.</p> <p>5 A. <b>Um-hmm. Yes.</b></p> <p>6 Q. Do you recall that being the approximate period</p> <p>7 when the sale of the Macomb Interceptor system</p> <p>8 from Detroit to Macomb was effected?</p> <p>9 A. <b>As to the other document we were looking at</b></p> <p>10 <b>before?</b></p> <p>11 Q. Well, no, just -- was the sale completed on or</p> <p>12 about September 2nd, 2010, if you recall?</p> <p>13 A. <b>Just what this document says. And my chief deputy</b></p> <p>14 <b>signed this. I guess that's what it is. I can't</b></p> <p>15 <b>say other than that.</b></p> <p>16 Q. All right. Looking at the second page, it has a</p> <p>17 paragraph 1.5, "Macomb's County's Knowledge"</p> <p>18 shall mean the actual knowledge of the Macomb</p> <p>19 County Public Works Commissioner." That was you</p> <p>20 at the time, right?</p> <p>21 A. <b>Yes.</b></p> <p>22 Q. And legal counsel, and you told me about</p> <p>23 Misterovich and Bodman --</p> <p>24 A. <b>Yes.</b></p> <p>25 Q. -- attorneys being legal counsel. It says "legal</p>
<p>Page 50</p> <p>1 collapse way back in 1977?</p> <p>2 A. <b>Yes.</b></p> <p>3 Q. In the same area?</p> <p>4 A. <b>Yes.</b></p> <p>5 Q. Do you know how long that took to repair?</p> <p>6 A. <b>No.</b></p> <p>7 <b>MARKED FOR IDENTIFICATION:</b></p> <p>8 DEPOSITION EXHIBIT 5</p> <p>9 11:35 a.m.</p> <p>10 <b>BY MR. WATSON:</b></p> <p>11 Q. Mr. Marrocco, I'll hand you what's been marked as</p> <p>12 Exhibit 5. And at the top it's entitled</p> <p>13 Acquisition Agreement; is that correct?</p> <p>14 A. <b>Yes.</b></p> <p>15 Q. Are you familiar with this document?</p> <p>16 A. <b>Not really.</b></p> <p>17 Q. Will you go to the last page. At the bottom it's</p> <p>18 25 of 25.</p> <p>19 A. <b>Yes.</b></p> <p>20 Q. It appears to be signed by Darryl Latimer and</p> <p>21 William Misterovich. Do you see that?</p> <p>22 A. <b>Yes.</b></p> <p>23 Q. And Misterovich is your chief deputy?</p> <p>24 A. <b>Yes.</b></p> <p>25 Q. Did he have authority to sign this document?</p>	<p>Page 50</p> <p>1 counsel assigned." That would probably be</p> <p>2 Misterovich. "Or retained," that would be Bodman</p> <p>3 folks, right?</p> <p>4 A. <b>Okay.</b></p> <p>5 Q. Then I'm looking at paragraph 1.10. It says</p> <p>6 "Detroit's knowledge' shall mean the knowledge</p> <p>7 of its director." Do you know who the director</p> <p>8 was September 2nd, 2010?</p> <p>9 A. <b>I think you said it was Pam Turner at that time?</b></p> <p>10 Q. 2009 it was Turner. I'm thinking 2010 she had</p> <p>11 gone and Latimer was serving as interim, but --</p> <p>12 A. <b>I had never heard of Darryl Latimer ever being the</b></p> <p>13 <b>director.</b></p> <p>14 Q. Okay.</p> <p>15 A. <b>So I think it had to be Pam Turner.</b></p> <p>16 Q. Okay. All right. So your understanding is that</p> <p>17 would be Turner. "...its assistant corporate</p> <p>18 counsel assigned to DWSD matters," do you know</p> <p>19 who that was?</p> <p>20 A. <b>I have no idea.</b></p> <p>21 Q. "...its assistant chief of engineering," do you</p> <p>22 know who that was?</p> <p>23 A. <b>I have no idea.</b></p> <p>24 Q. Do you know Shukla -- Ramesh Shukla?</p> <p>25 A. <b>Yeah, I know who Shukla is.</b></p>

<p>1 Q. Have you had dealings with him over the years?  2 Brief dealings, maybe?  3 <b>A. Minor dealings.</b>  4 Q. Any problem with Shukla at all?  5 <b>A. No, a very nice man.</b>  6 Q. You haven't seen or heard anything that leads to  7 you believe he was dishonest or would commit  8 fraudulent acts or anything like that, have you?  9 <b>A. No, I don't know him well enough.</b>  10 Q. Okay. Then 1.13 says "Global Settlement  11 Agreement' means the settlement agreement between  12 Detroit and Macomb, Oakland and Wayne counties  13 executed by the parties to that agreement" -- I'm  14 skipping some language -- "May 12, 2009." That's  15 the agreement we just covered, isn't it, the one  16 entitled Settlement Agreement?  17 <b>A. I believe so.</b>  18 Q. Okay. Turning to page 6 of 25, I'm looking at  19 2.5. It says "Macomb System." Did you read this  20 document, by the way? Have you ever really --  21 <b>A. This document?</b>  22 Q. Have you ever read this thing?  23 <b>A. No. Mr. Misterovich signed it.</b>  24 Q. Did you authorize him to sign it or did he say it  25 seems okay and -- or the attorney said it's okay?</p>	<p>Page 53</p> <p>1 <b>BY MR. WATSON:</b>  2 Q. Yeah. Do you know of any suits, whether criminal  3 or civil, involving that system?  4 <b>A. I have no idea what Detroit does.</b>  5 Q. Then 3.8 is "Disclosure of System Debt. Do you  6 see that?  7 <b>A. Um-hmm.</b>  8 Q. And then it starts off "Schedule 3.8 sets forth  9 all system debt." Do you see that language?  10 <b>A. Just a second. Which part of that 3.8 were you</b>  11 <b>referring to?</b>  12 Q. Under paragraph 3.8 it says "Disclosure of System  13 Debt. Schedule 3.8 sets forth all system debt."  14 And my question is: Do you see that language?  15 <b>A. Yes, I see that.</b>  16 <b>MARKED FOR IDENTIFICATION:</b>  17 DEPOSITION EXHIBIT 6  18 11:43 a.m.  19 <b>BY MR. WATSON:</b>  20 Q. Okay. Let me hand you what's been marked as  21 Marrocco Exhibit 6. And I'll ask, are you  22 familiar with that document? Have you seen that  23 before?  24 <b>A. Yes, I've seen this.</b>  25 Q. Is that the schedule, as far as you know, that</p>
<p>1 <b>A. I would have no idea. It's a long time ago.</b>  2 Q. All right. All right. Was it your understanding  3 that the system was sold as is?  4 <b>A. Yes.</b>  5 Q. Okay. I'm turning to page 11 of 25. It talks  6 about litigation. Were you aware of any  7 litigation impacting the system?  8 <b>A. Which one? Which number?</b>  9 Q. 3.7.  10 <b>A. Okay. Was I aware of what?</b>  11 Q. Any litigation that could impact the system.  12 <b>MS. BADALAMENTI:</b> It's an ambiguous  13 term. What is the term "litigation" being defined  14 as here? It calls for a legal conclusion, unless  15 you want to specify.  16 <b>BY MR. WATSON:</b>  17 Q. Are you aware of any major litigation or any  18 litigation Detroit was involved in regarding the  19 Macomb Interceptor system?  20 <b>MS. BADALAMENTI:</b> Same objections.  21 It's unclear whether this paragraph includes  22 criminal, civil, claims not brought. It's  23 unclear.  24 <b>THE WITNESS:</b> You're talking at that  25 time, right, September of 2010?</p>	<p>Page 54</p> <p>1 delineates the various debt on the system?  2 <b>A. That's what it says at the top of the page, system</b>  3 <b>debt.</b>  4 Q. Okay. And I'm looking at, under A, Projects  5 Covered By Global Settlement. Do you see that?  6 <b>A. On this page you gave me?</b>  7 Q. Yes.  8 <b>A. Under A?</b>  9 Q. Right. A. Projects Covered By Global  10 Settlement.  11 <b>A. Projects Covered By Global Settlement, okay.</b>  12 Q. One of the projects is CS-1368 2004 repairs,  13 correct?  14 <b>A. Yes.</b>  15 Q. And the number attributed to that is the 54  16 million plus number, right?  17 <b>A. Yes. Um-hmm.</b>  18 Q. And that's where the dispute is primarily?  19 <b>A. Yes.</b>  20 Q. Okay. But there are a number of other projects  21 listed, correct?  22 <b>A. Yes.</b>  23 Q. And you're not disputing these other ones, are  24 you?  25 <b>A. Not the lawsuit that we filed against Detroit.</b></p>

<p style="text-align: right;">Page 57</p> <p>1 Q. Are you aware of any claims in regard to any 2 other claims against Detroit on any of these 3 other matters? 4 <b>A. I'm not sure.</b> 5 Q. Okay. And then I'm looking down three-fourths of 6 the way down where it says "Global Settlement." 7 We see that 17,050,000? 8 <b>A. Yes. Um-hmm.</b> 9 Q. That was a reduction on the price, right? 10 <b>A. On the global settlement.</b> 11 Q. Right. 12 <b>A. On everything.</b> 13 Q. Okay. 14 <b>A. But it doesn't specify how much of the 17 million</b> 15 <b>is applied to one particular project or the other.</b> 16 Q. Correct. Right. But the amount was reduced by 17 17 million? 18 <b>A. Yes, according to this.</b> 19 Q. And there are various other items, additions, 20 subtractions, so forth, correct? 21 <b>A. Correct.</b> 22 Q. Now, you indicated you weren't the principal 23 negotiator of all this stuff? 24 <b>A. Correct.</b> 25 Q. You had folks doing it for you, and Detroit had a</p>	<p style="text-align: right;">Page 59</p> <p>1 <b>A. Okay.</b> 2 Q. Paragraph 8.9 "Resolution of all Certain 3 Disputes," that's odd language, but that's what 4 it says, correct? 5 <b>A. Yes.</b> 6 Q. It says "Macomb County and Detroit shall have 7 executed an agreement acknowledging that all 8 pending disputes between such parties with 9 respect to rates and all other matters have been 10 resolved." Do you see that? 11 <b>A. Yes.</b> 12 Q. Do you know if in conjunction with this 13 acquisition agreement such additional agreement 14 was executed? 15 <b>A. At the time this was?</b> 16 Q. Yeah. 17 <b>A. I have no idea if there was another agreement.</b> 18 <b>MARKED FOR IDENTIFICATION:</b> 19 DEPOSITION EXHIBIT 7 20 11:48 a.m. 21 <b>BY MR. WATSON:</b> 22 Q. Let me hand you, Mr. Marrocco, what's been 23 labeled Exhibit No. 7 -- 24 <b>A. Um-hmm.</b> 25 Q. -- which says at the top "Macomb Interceptor</p>
<p style="text-align: right;">Page 58</p> <p>1 team doing it for it, correct? 2 <b>A. Yes. Um-hmm.</b> 3 Q. And this was going back and forth for -- was it 4 years that it took before you could reach this? 5 <b>A. Yeah, I'm sure it did.</b> 6 Q. Why do you think it took so long? 7 <b>A. Because there's more than one person in a room --</b> 8 <b>many minds, many people. The mayor never was at</b> 9 <b>any of them, either, and he just sent his minions</b> 10 <b>there to negotiate.</b> 11 Q. You had sophisticated counsel on each side? 12 <b>A. Yes.</b> 13 Q. And at least one high-ranking official on each 14 side? 15 <b>A. I can't speak for the other side.</b> 16 Q. Okay. But Misterovich is a pretty high-ranking 17 official? 18 <b>A. On my side.</b> 19 Q. He's right under you, right? 20 <b>A. That's correct.</b> 21 Q. And you're the top guy in this public works area 22 in Macomb County? 23 <b>A. I am.</b> 24 Q. We were going through the acquisition agreement. 25 Let's go to page 17 of 25.</p>	<p style="text-align: right;">Page 60</p> <p>1 Acquisition Settlement and Release of Certain 2 Rate Disputes," correct? 3 <b>A. Yes.</b> 4 Q. And then on the last page there appears to be the 5 signature of Misterovich and Latimer again? 6 <b>A. There appears to be.</b> 7 Q. And they're the same two guys who signed the 8 acquisition agreement, correct? 9 <b>A. Yes, they are.</b> 10 Q. And then the first paragraph of the document 11 references a date, September 2nd, 2010, does it 12 not? 13 <b>A. Yes.</b> 14 Q. And that's the date of the acquisition agreement, 15 isn't it? 16 <b>A. Yes.</b> 17 Q. Okay. I'm looking at -- well, first, let me ask 18 this: Have you seen this before? 19 <b>A. I don't -- I don't think I have.</b> 20 Q. Looking at paragraph 1 on the first page -- 21 <b>MS. BADALAMENTI:</b> Let's give him a 22 chance to review the beginning before you get to 23 paragraph 1. He's just told you he hasn't seen 24 it. 25 <b>BY MR. WATSON:</b></p>

<p>1 Q. Take whatever time you need.</p> <p>2 A. Okay. I've looked at it. I just read the beginning page.</p> <p>3 Q. Are you ready?</p> <p>4 A. I'm ready.</p> <p>5 Q. Okay. Page 1 of 7, where it says "1. Waiver and Release of Claims" reads "Detroit and Macomb County waive and release any claims with regard to the following matters," and then it says "a. The cost of all projects and contracts shown on Schedule 3.8 of the MID agreement and the calculation of all credits, charges and adjustments set forth in that schedule." Do you see that language?</p> <p>6 A. Um-hmm. Yes.</p> <p>7 Q. Was that your understanding of the agreement between Macomb and Detroit, that all these claims would be released?</p> <p>8 A. I didn't sign this agreement.</p> <p>9 Q. So you don't know?</p> <p>10 A. Well, I can't speak on behalf of Mr. Misterovich.</p> <p>11 I don't know when this -- when was this thing signed, anyways? I don't see a date.</p> <p>12 Q. Looking at page 3 of 7, it talks about waiving and releasing.</p>	<p>Page 61</p> <p>1 paragraph?</p> <p>2 A. That's an accurate summary? I don't know.</p> <p>3 MS. BADALAMENTI: I mean, those are defined terms in the agreement and you're not referencing them. You're just referencing the paragraph where they're used.</p> <p>4 THE WITNESS: I don't know if those numbers are true or not, so --</p> <p>5 BY MR. WATSON:</p> <p>6 Q. Okay. But let me ask it this way: Were you aware of a \$3 million adjustment to the purchase price in regard to the OMI agreement and in regard to the Macomb Interceptor purchase price?</p> <p>7 A. I can't remember all that.</p> <p>8 Q. But it is true that Detroit at some point agreed to reduce the purchase price, sort of clinch the deal? Do you recall that?</p> <p>9 A. When was this?</p> <p>10 MS. BADALAMENTI: Hold on. I'm going to object to that question. That's an overbroad question and it's certainly not what's being referred to in this agreement. If you have a question about a time frame that's unrelated to this question, I think you need to clarify.</p> <p>11 BY MR. WATSON:</p>
<p>12 Q. So you don't know?</p> <p>13 A. Well, I can't speak on behalf of Mr. Misterovich.</p> <p>14 I don't know when this -- when was this thing signed, anyways? I don't see a date.</p> <p>15 Q. Looking at page 3 of 7, it talks about waiving and releasing.</p> <p>16 MS. BADALAMENTI: Where are you?</p> <p>17 MR. WATSON: Paragraph F.</p> <p>18 BY MR. WATSON:</p> <p>19 Q. Let me just read the pertinent part: "Except as provided in Section below and rights arising under this agreement, Macomb County waives and releases its claims against Detroit and Detroit waives and releases its claims against Macomb County with regard to all other known or unknown claims or disputes with regard to rates charged to the MCWDD as a separate user class for all rate years up to and including the FY2009/10."</p> <p>20 Do you see that language?</p> <p>21 A. Yes.</p> <p>22 Q. Let me ask it this way: Does that fit with your understanding of an agreement reached between Macomb and Detroit?</p> <p>23 A. That's what it says.</p> <p>24 Q. I'm looking at page 6 of 7, Adjustment to Resolve Disputes, paragraph 5. And that talks about a \$3 million adjustment to resolve disputes, almost 2.2 -- well, 2.179 million applied to the OMI purchase price and 870,000 to the Macomb Interceptor purchase price. That's an accurate kind of summary of what that says, correct, that</p>	<p>Page 62</p> <p>1 Q. I don't think it's overbroad, but let me break it down this way: Do you recall an OMI agreement reached between Detroit, Macomb, Oakland counties? Yes.</p> <p>2 A. An agreement?</p> <p>3 Q. Yes.</p> <p>4 A. Yes.</p> <p>5 Q. And that agreement was reached in 2009?</p> <p>6 A. Exact date, I don't remember.</p> <p>7 Q. Okay. But that agreement was reached before the acquisition agreement?</p> <p>8 MS. BADALAMENTI: With Macomb?</p> <p>9 BY MR. WATSON:</p> <p>10 Q. Do you recall that?</p> <p>11 A. No.</p> <p>12 Q. Okay. Do you recall that Detroit, to speed the negotiations along and try to get the deal concluded, agreed to reduce the purchase price on both the OMI system and the Macomb Interceptor system? Do you --</p> <p>13 A. There was something --</p> <p>14 Q. -- remember that all?</p> <p>15 A. All I know, there was a \$17 million global settlement credit.</p> <p>16 Q. Okay.</p>

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<p>1 A. <b>How that was broken out, I don't know.</b></p> <p>2 Q. Do you recall there were other reductions in the 3 purchase price on top of the 17 million?</p> <p>4 A. <b>I know there's -- and I'm not sure whether this</b> 5 <b>happened before, after, whenever, but there was</b> 6 <b>\$7 million that Detroit received back from</b> 7 <b>contractors on the job, which they've never sent</b> 8 <b>to Macomb County.</b></p> <p>9 Q. 7 million?</p> <p>10 A. <b>Yeah.</b></p> <p>11 Q. On what job?</p> <p>12 A. <b>On the collapse -- sewer collapse.</b></p> <p>13 Q. That Detroit -- are you referring to the 14 settlement Detroit had with Inland?</p> <p>15 A. <b>I believe so, yeah.</b></p> <p>16 Q. And your position is Macomb should have gotten 17 that money or some of that money?</p> <p>18 A. <b>Well, we paid it. We paid it to Inland. Why is</b> 19 <b>Inland giving it to Detroit?</b></p> <p>20 Q. Well, didn't Inland -- Detroit pay Inland and 21 then --</p> <p>22 A. <b>No.</b></p> <p>23 Q. -- the system was sold and you paid Detroit?</p> <p>24 A. <b>Absolutely wrong. Macomb County paid Detroit, who</b> 25 <b>paid Inland. Inland refunded 7 million back to</b></p>	<p>1 to jail. Maybe they shouldn't have gone to jail.</p> <p>2 <b>Maybe they weren't lying, huh?</b></p> <p>3 <b>MR. WATSON:</b> Let me take a short break 4 and we'll come back.</p> <p>5 (Off the record at 11:59 a.m.)</p> <p>6 <b>MARKED FOR IDENTIFICATION:</b></p> <p>7 DEPOSITION EXHIBIT 8 8 12:12 a.m.</p> <p>9 (Back on the record at 12:12 p.m.)</p> <p>10 <b>BY MR. WATSON:</b></p> <p>11 Q. Mr. Marrocco, you've been handed what's been 12 marked as Exhibit 8 --</p> <p>13 A. <b>Yes.</b></p> <p>14 Q. -- which appears to be the Summons and Complaint 15 filed by Macomb Interceptor Drainage District 16 against City of Detroit in Macomb Circuit Court, 17 correct?</p> <p>18 A. <b>Yes.</b></p> <p>19 Q. Did you see this Complaint prior to the time it 20 was filed?</p> <p>21 A. <b>I'm sure I did, but I can't be --</b></p> <p>22 Q. And you did authorize this suit?</p> <p>23 A. <b>Yes, I did.</b></p> <p>24 Q. Going to page 3, under General and Factual 25 Background, it reads "The primary cause of this</p>
Page 66	Page 68
<p>1 <b>Detroit, and that money was never sent to Macomb</b> 2 <b>County.</b></p> <p>3 Q. Do you know what Detroit --</p> <p>4 A. <b>And then you want to ask me why things aren't fair</b> 5 <b>and square here, right?</b></p> <p>6 Q. Do you know what claims Detroit asserted in that 7 lawsuit against Inland?</p> <p>8 A. <b>I don't know.</b></p> <p>9 Q. Are you familiar that eventually Macomb County 10 sued Detroit in Macomb Circuit Court?</p> <p>11 A. <b>Yes.</b></p> <p>12 Q. Did you authorize that suit?</p> <p>13 A. <b>Yes, I did.</b></p> <p>14 Q. Why?</p> <p>15 A. <b>Because I believe Macomb County rate payors were</b> 16 <b>overcharged for the sewer collapse repair bill.</b></p> <p>17 Q. And have you told us in this deposition all the 18 reasons why you believe Macomb was overcharged?</p> <p>19 Any other statements? Facts?</p> <p>20 A. <b>I have an engineer's estimate what it would cost</b> 21 <b>to do it. I have statements from federal court</b> 22 <b>that admit to overcharging. I think those are two</b> 23 <b>pretty good reasons.</b></p> <p>24 Q. Is there anything else you have?</p> <p>25 A. <b>I think those are pretty good. Some people went</b></p>	<p>1 action is a breach of contract/fraudulent 2 inducement to contract by Detroit relating to the 3 sale of assets, including, but not limited to, 4 the Macomb Interceptor System." Do you see that 5 language?</p> <p>6 A. <b>Yes, I do.</b></p> <p>7 Q. Is that your understanding, that that's the 8 primary claim, is breach of contract/fraudulent 9 inducement?</p> <p>10 A. <b>That's what my attorney put there. I guess it's</b> 11 <b>legalese.</b></p> <p>12 Q. Now, with the fraud claim, is it your 13 understanding that Macomb takes the position that 14 Detroit, prior to the sale, should have disclosed 15 certain information that it had?</p> <p>16 A. <b>Yes.</b></p> <p>17 Q. So it's the actions of Detroit before the sale 18 that you're focused on?</p> <p>19 A. <b>Yes.</b></p> <p>20 Q. In looking at paragraph -- look at paragraph 14.</p> <p>21 A. <b>Um-hmm.</b></p> <p>22 Q. It talks about the superseding indictment in 23 Ferguson and Inland Waters entering into side 24 agreements. Do you see that paragraph?</p> <p>25 A. I see 14, yes.</p>

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<p>1 Q. Did you ever meet Bobby Ferguson?</p> <p>2 A. <b>Never.</b></p> <p>3 Q. Has he ever done any work for Macomb County?</p> <p>4 A. <b>Not to my knowledge.</b></p> <p>5 Q. Have you ever testified before the grand jury?</p> <p>6 A. <b>Never.</b></p> <p>7 Q. Do you know if any Macomb County employees were interviewed in regard to the grand jury investigation, interviewed by the FBI or testified before the grand jury?</p> <p>11 A. <b>Regarding what?</b></p> <p>12 Q. The 15 Mile Road sewer collapse.</p> <p>13 A. <b>So regarding that again, what's the question?</b></p> <p>14 Q. Any Macomb County employees or attorneys testify before the grand jury or get interviewed by the FBI in regard to the matter?</p> <p>17 A. <b>No, I'm not aware of anybody.</b></p> <p>18 Q. Do you have any personal knowledge of the dealings between Inland and Ferguson?</p> <p>20 A. <b>Only what I read.</b></p> <p>21 Q. Have you ever done business -- Macomb done business with Inland?</p> <p>23 A. <b>Just recently.</b></p> <p>24 Q. When did you do business with Inland?</p> <p>25 A. <b>It was in conjunction with Oakland County under</b></p>	<p>1 <b>so the sewage could flow. At that point, the emergency was over.</b></p> <p>3 Q. Do you know whether or not the bypass was something that was unstable and had to be monitored constantly?</p> <p>6 A. <b>Of course it would have to be. It's a temporary fix.</b></p> <p>8 Q. Do you know whether or not the sinkhole was expanding?</p> <p>10 A. <b>I have no idea if it were or not.</b></p> <p>11 Q. Did you consider it to be an emergency -- let me rephrase it.</p> <p>13 Did you believe that DWSD had to take actions to prevent houses from falling into the sinkhole immediately?</p> <p>16 A. <b>So start your question again.</b></p> <p>17 Q. Okay. I'm trying to find out what was and was not an emergency. Was it an emergency to prevent homes from falling into the sinkhole? Should that action have been taken on an emergency basis, in your opinion?</p> <p>22 A. <b>Of course, if homes would have fallen into the sinkhole, but there's no proof of that. The homes were far enough away from the sinkhole.</b></p> <p>25 Q. In regard to air pollution or water or polluting</p>
Page 70	Page 72
<p>1 <b>the OMID drain district we formed with them, and they were awarded a contract this past year to do some repair work on the interceptor.</b></p> <p>4 Q. Okay. Looking at paragraph 16, it talks about "in or about the spring of 2003, the DWSD and Inland agreed to set fixed unit prices for subcontractor work on CS-1368." Do you see that?</p> <p>8 A. <b>Yes.</b></p> <p>9 Q. That's something you don't have any personal knowledge of, I take it?</p> <p>11 A. <b>I have no idea what CS-1368 is.</b></p> <p>12 Q. Okay. As far as the various factual allegations, what D'Agostini did and Ferguson did and Inland did and Detroit did, is it fair to say you don't have personal knowledge of any of that stuff?</p> <p>16 A. <b>Only what I read.</b></p> <p>17 Q. Okay. Did you consider the 15 Mile Road sewer collapse an emergency?</p> <p>19 A. <b>The only emergency was to restore the flow of the sewage.</b></p> <p>21 Q. Do you know how long it took to restore that flow?</p> <p>23 A. <b>Exactly, I can't tell you, but it was a short period of time. I think it was Mersino -- the contractor went out there and put a bypass line in</b></p>	<p>1 the water or backing up in basements, should actions have been taken to address those situations on an emergency basis?</p> <p>4 A. <b>There was none of that.</b></p> <p>5 Q. Could that have happened if the repairs weren't effected quickly enough, though?</p> <p>7 A. <b>No, they had the emergency bypass and that was the main concern. Road was down. Road got barricaded, detour down to 14 Mile or detour up to 16 Mile, that didn't create nothing. Like I say, once the sewage was flowing again, there was no emergency.</b></p> <p>13 Q. Did you ever go out to the project?</p> <p>14 A. <b>Yes, I did.</b></p> <p>15 Q. How many times did you go out there?</p> <p>16 A. <b>From the day of the sinkhole until it was final, opened up the road?</b></p> <p>18 Q. Yeah.</p> <p>19 A. <b>Oh, my God, so many times I couldn't count, but I can tell you I was there the first day it was down. I was there.</b></p> <p>22 Q. Was it a huge project?</p> <p>23 A. <b>Of course it was a huge project. I'm not saying it wasn't.</b></p> <p>25 Q. Did Macomb have a representative assigned to</p>

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<p>1 monitor the progress on that project?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Who was that?</p> <p>4 <b>A. I believe it was Tom Stockel.</b></p> <p>5 Q. Are you familiar with a Mr. Penrod? Was he there</p> <p>6 as well?</p> <p>7 <b>A. Don Penrod, sure, he might have been there, but I</b></p> <p>8 <b>think Stockel might have been more on top of it.</b></p> <p>9 <b>Penrod would have been his supervisor.</b></p> <p>10 Q. What were they supposed to be doing out there,</p> <p>11 drinking coffee?</p> <p>12 <b>A. Just keeping an eye on the project, I guess, make</b></p> <p>13 <b>sure it was moving along. I'm not sure. You kind</b></p> <p>14 <b>of do that. City of Sterling Heights had someone</b></p> <p>15 <b>there, too, an inspector, so --</b></p> <p>16 Q. Did you expect them to look at documents to the</p> <p>17 extent there are contracts with contractors to</p> <p>18 fix things? Was part of their job to look at</p> <p>19 those agreements?</p> <p>20 <b>A. It was the City of Detroit's project. We had no</b></p> <p>21 <b>say in what went on over there.</b></p> <p>22 Q. Could they, to your knowledge, ask to see</p> <p>23 anything they wanted to see?</p> <p>24 <b>A. Could they ask?</b></p> <p>25 Q. Yeah.</p>	<p>1 Ferguson and Miller." And you based that on the</p> <p>2 indictment?</p> <p>3 <b>MS. BADALAMENTI:</b> The paragraph</p> <p>4 expressly bases it on the indictment.</p> <p>5 <b>BY MR. WATSON:</b></p> <p>6 Q. Do you have any additional knowledge in that</p> <p>7 regard? Anything outside of the indictment?</p> <p>8 <b>A. Myself?</b></p> <p>9 Q. Yeah.</p> <p>10 <b>A. No.</b></p> <p>11 Q. And then paragraph 35 starts off "The scheme</p> <p>12 resulted in excessive overcharges on the</p> <p>13 project." Do you see that?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. And are you basing that on the indictment as</p> <p>16 well?</p> <p>17 <b>A. Not just the indictment. I'm also basing that on</b></p> <p>18 <b>the engineer's estimate that we had prepared.</b></p> <p>19 Q. Anything else?</p> <p>20 <b>A. I think that's sufficient.</b></p> <p>21 Q. Anything else, though, whether or not it's</p> <p>22 sufficient? Is that all you can recall as we sit</p> <p>23 here today?</p> <p>24 <b>A. I had our engineer do an estimate, and I've also</b></p> <p>25 <b>seen what the indictment says. Is there anything</b></p>
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<p>1 <b>A. I don't know. But, again, the City of Detroit.</b></p> <p>2 Q. Are you aware of Detroit ever denying any Macomb</p> <p>3 request as far as inspecting areas, viewing</p> <p>4 documents, attending meetings?</p> <p>5 <b>A. I'm not aware of that. No one ever made mention</b></p> <p>6 <b>to me about it. It could have happened, but I'm</b></p> <p>7 <b>not sure.</b></p> <p>8 Q. Were the Macomb and Sterling Heights</p> <p>9 representatives allowed to go to the daily</p> <p>10 meetings?</p> <p>11 <b>A. I have no idea.</b></p> <p>12 Q. Did you ever go to any of the daily meetings?</p> <p>13 <b>A. No, I never went to a daily meeting.</b></p> <p>14 Q. When you were out there, was Mercado out there a</p> <p>15 lot as well?</p> <p>16 <b>A. On occasion. I seen him a couple times.</b></p> <p>17 Q. Was Shukla the top guy on the scene day to day?</p> <p>18 <b>A. During the day there? No, I don't think I seen</b></p> <p>19 <b>Shukla there.</b></p> <p>20 Q. I'm looking at paragraph 33. Just to confirm,</p> <p>21 the last sentence reads "In return for these</p> <p>22 unlawful and excessive contract awards, profits,</p> <p>23 fees, expenses, and costs, the contractors and</p> <p>24 subcontractors made unlawful payments and/or</p> <p>25 provided unlawful gratuities to Kilpatrick,</p>	<p>1 <b>else? I mean, how else would you know? There was</b></p> <p>2 <b>an admission in court. They admitted in court</b></p> <p>3 <b>what they did.</b></p> <p>4 Q. Looking at paragraph 40, it starts off "The</p> <p>5 grossly inflated project total became the</p> <p>6 plaintiff's direct responsibility for order of</p> <p>7 Judge Feikens dated December 18, 2008." Do you</p> <p>8 see that?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Do you understand what that means? I'm not</p> <p>11 sure -- I'm not familiar with Judge Feikens'</p> <p>12 order, December 18, 2008. Are you familiar with</p> <p>13 that at all?</p> <p>14 <b>A. No. I don't remember what he ordered on that</b></p> <p>15 <b>date.</b></p> <p>16 Q. And the -- pursuant to the settlement agreement</p> <p>17 or really the acquisition agreement, Macomb was</p> <p>18 obligated to pay Detroit, wasn't it, once you</p> <p>19 signed that acquisition agreement?</p> <p>20 <b>A. Okay. Now I understand what this December 18th</b></p> <p>21 <b>might be. That may be when we -- I don't know --</b></p> <p>22 <b>sued Detroit over -- we went to Feikens and said,</b></p> <p>23 <b>hey, this is not Macomb County's bill to pay in</b></p> <p>24 <b>total. It should be part of the system. And</b></p> <p>25 <b>Feikens ruled against us and said no, Macomb has</b></p>

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<p>1 <b>to pay the total of the sewer collapse.</b></p> <p>2 Q. Oh, okay. Thank you. That's what that's about.</p> <p>3 Okay. Paragraph 41 says "At the time</p> <p>4 of this ruling, the scheme and its production of</p> <p>5 grossly inflated overcharges was concealed from</p> <p>6 Judge Feikens and MIDDD." Do you see that</p> <p>7 language?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And we've already talked about why you believe it</p> <p>10 was concealed, what you base the conclusion of</p> <p>11 fraud and concealment on, haven't we? The</p> <p>12 Mercado conversations? What I'm trying to say,</p> <p>13 is there anything else you base this allegation</p> <p>14 on other than what we've already covered in your</p> <p>15 deposition?</p> <p>16 <b>A. Which allegation?</b></p> <p>17 Q. The allegation that the scheme and its production</p> <p>18 of grossly inflated overcharges was concealed</p> <p>19 from Judge Feikens and MIDDD.</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And is there anything else you base that on other</p> <p>22 than what you've testified to today?</p> <p>23 <b>A. No. That's it, I think.</b></p> <p>24 Q. Okay.</p> <p>25 <b>A. Do you want me to make up something for you?</b></p>	<p>1 objectionable question, but you can go ahead.</p> <p>2 <b>BY MR. WATSON:</b></p> <p>3 Q. The articles you read, what were they focused on?</p> <p>4 <b>A. What were they focused on?</b></p> <p>5 Q. Yeah. You said you read articles about the</p> <p>6 indictment.</p> <p>7 <b>A. They were focused on criminal enterprise that they</b></p> <p>8 <b>had going on, and how they overcharged for the</b></p> <p>9 <b>sewer collapse.</b></p> <p>10 Q. So you've seen articles about overcharging for</p> <p>11 the sewer collapse?</p> <p>12 <b>A. Um-hmm.</b></p> <p>13 Q. Do you recall what publication these articles</p> <p>14 were in?</p> <p>15 <b>A. Local papers.</b></p> <p>16 Q. Macomb or --</p> <p>17 <b>A. Daily.</b></p> <p>18 Q. -- Detroit?</p> <p>19 <b>A. Detroit. I think I also read some of the</b></p> <p>20 <b>transcripts.</b></p> <p>21 Q. Trial transcript?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Did you ever see anything about favoritism in any</p> <p>24 of the articles?</p> <p>25 <b>A. Criminal activity, I did.</b></p>
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<p>1 Q. No, I absolutely don't.</p> <p>2 I take it you disagree with Judge</p> <p>3 Cleland's deposition that the tort claims belong</p> <p>4 to Detroit?</p> <p>5 <b>A. Of course, anything that's ruled against us, I'm</b></p> <p>6 <b>against. If it was in my favor, I'd like it.</b></p> <p>7 Q. In regard to the Ferguson indictment, you</p> <p>8 mentioned a few times what you read in the paper,</p> <p>9 indictment, Ferguson, Miller, Mercado,</p> <p>10 Kilpatrick. Weren't the articles in the paper</p> <p>11 primarily focused on favoritism shown to Ferguson</p> <p>12 by Kilpatrick?</p> <p>13 <b>A. Is that what they focused on?</b></p> <p>14 Q. Yeah.</p> <p>15 <b>MS. BADALAMENTI:</b> What time frame are</p> <p>16 you referring to?</p> <p>17 <b>BY MR. WATSON:</b></p> <p>18 Q. I'm referring to 2010 -- December 2010 and years</p> <p>19 thereafter when they talked about the</p> <p>20 indictments. Weren't they primarily focused on</p> <p>21 Ferguson being unfairly favored in getting all</p> <p>22 these contracts and --</p> <p>23 <b>MS. BADALAMENTI:</b> I'm going to object</p> <p>24 to foundation. He doesn't know what articles</p> <p>25 you're talking about. It's an overbroad and</p>	<p>1 Q. Don't recall favoritism?</p> <p>2 <b>A. No, I don't. There's a lot of words in the</b></p> <p>3 <b>English language to specify one or the other. I</b></p> <p>4 <b>don't know, but --</b></p> <p>5 Q. Look at paragraph 83. It reads "Defendant</p> <p>6 knowingly and intentionally made</p> <p>7 misrepresentations leading up to and in the</p> <p>8 Macomb acquisition agreement." Do you see that</p> <p>9 language?</p> <p>10 <b>A. Not yet. Paragraph 83?</b></p> <p>11 Q. Yeah.</p> <p>12 <b>A. Okay. I'm on it now.</b></p> <p>13 Q. And by defendant, defendant is?</p> <p>14 <b>A. Detroit?</b></p> <p>15 Q. Detroit. The individuals you're aware of -- or</p> <p>16 individual who made these misrepresentations is</p> <p>17 Mercado? Is that to you personally are aware of?</p> <p>18 <b>MS. BADALAMENTI:</b> I'm going to object.</p> <p>19 It calls for a legal conclusion, Mr. Marrocco</p> <p>20 didn't draft this document. He doesn't know what</p> <p>21 the paragraph is referring to. He couldn't</p> <p>22 possibly answer that question. But you can go</p> <p>23 ahead. Do the best you can.</p> <p>24 <b>BY MR. WATSON:</b></p> <p>25 Q. Well, who from your personal knowledge, not what</p>

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<p>1 you read in the papers or -- just what you know,    2 who made the misrepresentations? Anyone other    3 than Mercado and the misrepresentations that have    4 been fully discussed?</p> <p>5 <b>A. As far as the purchase price for the system? Is</b>    6 <b>that what you're talking about?</b></p> <p>7 Q. Yeah, the purchase --</p> <p>8 <b>A. I don't think there was a full disclosure, whether</b>    9 <b>it's Mercado or the legal department of Detroit.</b></p> <p>10 Q. Did you speak to anyone in the legal department?</p> <p>11 <b>A. No. There's so many people. I ain't going to set</b>    12 <b>there and speak to everybody. You just expect in</b>    13 <b>a business relationship, you bring forward</b></p> <p>14 <b>everything you have, all the information you have.</b></p> <p>15 Q. The one you personally spoke to was Mercado?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. And we fully covered those conversations, haven't    18 we?</p> <p>19 <b>A. Yes. I spoke to him more than the occasions we</b>    20 <b>talked about. We talked -- he came to my office</b>    21 <b>one day and I spoke to him in my office.</b></p> <p>22 Q. We haven't talked about that one, have we?</p> <p>23 <b>A. No.</b></p> <p>24 Q. What was discussed?</p> <p>25 <b>A. I told you about on the project site. I said a</b></p>	<p>1 the best you're able.</p> <p>2 <b>BY MR. WATSON:</b></p> <p>3 Q. Do you want to rescind the deal?</p> <p>4 <b>A. If I can get a cheaper price than the \$90 million,</b>    5 <b>I guess I would. I think, you know, there's more</b>    6 <b>evidence out there now.</b></p> <p>7 Q. While the project was going on and Macomb had at    8 least one representative on the project, are you    9 aware of any complaint Macomb ever registered    10 about the project and the cost other than the    11 testimony you've given?</p> <p>12 <b>A. Anybody we had out on the job --</b></p> <p>13 Q. Yeah.</p> <p>14 <b>A. -- was not there -- was not there to contain cost.</b></p> <p>15 Q. Did they ever complain about the costs, to your    16 knowledge?</p> <p>17 <b>A. They would not -- that was -- they're not</b>    18 <b>experienced in that, and that was not their job.</b></p> <p>19 Q. Do you know of anyone complaining about the costs    20 other than what you testified to when you    21 complained to Mercado?</p> <p>22 <b>A. Oh, I think I'm the person who should complain</b>    23 <b>about the cost.</b></p> <p>24 Q. Are you aware of anyone else complaining?</p> <p>25 <b>A. I don't think I should have to be aware.</b></p>
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<p>1 <b>few times over there, but also the time he came to</b>    2 <b>my office.</b></p> <p>3 Q. What was discussed then?</p> <p>4 <b>A. Well, that he was going to give credit back or</b>    5 <b>something on jobs.</b></p> <p>6 Q. Anything else you recall?</p> <p>7 <b>A. No. That was the main -- main point of it, but</b>    8 <b>then that never materialized, so --</b></p> <p>9 Q. Any other time you talked to him where he made    10 some type of misrepresentation?</p> <p>11 <b>A. Yeah, in his office down in Detroit. I talked to</b>    12 <b>him in his office.</b></p> <p>13 Q. What did he say then?</p> <p>14 <b>A. Basically the same thing all the time, we'll make</b>    15 <b>adjustments, we'll make adjustments, or</b>    16 <b>everything's fair. If there's anything wrong,</b>    17 <b>we'll give you an adjustment back, this and that.</b></p> <p>18 Q. Is Macomb County willing to give the system back    19 to Detroit if Detroit refunds the purchase price?</p> <p>20 Do you want to rescind this whole deal?</p> <p>21 <b>MS. BADALAMENTI:</b> I'm going to object</p> <p>22 again. You're talking about something that's been    23 pled, a legal term of recision as a remedy, and</p> <p>24 he's not a lawyer. He's not in a position to</p> <p>25 answer that question. But you can go ahead, to</p>	<p>1 Q. Well, whether or not you --</p> <p>2 <b>A. The buck stops here. I made the decision. And</b>    3 <b>they overcharged.</b></p> <p>4 Q. Okay. Did Misterovich ever complain, to your    5 knowledge?</p> <p>6 <b>A. Misterovich is an attorney.</b></p> <p>7 Q. What does that mean?</p> <p>8 <b>A. He's not a contractor. He's not in the</b>    9 <b>construction industry.</b></p> <p>10 Q. Can you answer my question? Other than what    11 you've testified to, are you aware of any other    12 complaints about the costs?</p> <p>13 <b>A. You know, I probably had rumblings. If you want</b>    14 <b>me to specify the name of a person, I can't do</b>    15 <b>that, but just there were rumblings. There were</b>    16 <b>rumblings.</b></p> <p>17 <b>MR. WATSON:</b> All right. That's all</p> <p>18 I've got.</p> <p>19 <b>EXAMINATION</b></p> <p>20 <b>BY MS. BADALAMENTI:</b></p> <p>21 Q. I just have a couple of questions.</p> <p>22 Commissioner, if you had known about</p> <p>23 these overcharges, would Macomb have entered into</p> <p>24 the acquisition agreement on these terms?</p> <p>25 <b>A. Absolutely not. We would have wanted more than</b></p>

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1 that 17 million -- 17 million? We would have  
2 asked for more than \$17 million credit.

3 Q. If the -- if you had known that there was an  
4 ongoing criminal investigation by the FBI that  
5 preceded the acquisition agreement, that had that  
6 information been disclosed to you by Detroit  
7 prior to September 2nd, 2010, would you have  
8 entered into the acquisition agreement?

9 A. No. That's for sure not.

10 MS. BADALAMENTI: No further questions.

11 MR. WATSON: Nothing further.

12 (The deposition was concluded at 12:37 p.m.

13 Signature of the witness was not requested by  
14 counsel for the respective parties hereto.)

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1 CERTIFICATE OF NOTARY

2 STATE OF MICHIGAN )

3 ) SS

4 COUNTY OF MACOMB )

5

6 I, MELINDA S. MOORE, certify that this  
7 deposition was taken before me on the date  
8 hereinbefore set forth; that the foregoing  
9 questions and answers were recorded by me  
10 stenographically and reduced to computer  
11 transcription; that this is a true, full and  
12 correct transcript of my stenographic notes so  
13 taken; and that I am not related to, nor of  
14 counsel to, either party nor interested in the  
15 event of this cause.

*Melinda S. Moore*

22 MELINDA S. MOORE, CSR-2258

23 Notary Public,

24 Macomb County, Michigan

25 My Commission expires: September 6, 2016